

Senate Study Bill 1253

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
PUBLIC SAFETY BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the practices and procedures of the department
2 of public safety including school inspections, gaming floor or
3 wagering area restrictions, public intoxication testing,
4 operating a vehicle, motorboat, or sailboat while intoxicated
5 testing, interception of communications, and peace officers
6 acting with federal agents, and providing penalties.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
8 TLSB 1333DP 83
9 jm/nh/14

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1 1 DIVISION I
1 2 SCHOOL FIRE INSPECTIONS
1 3 Section 1. Section 100.31, Code 2009, is amended to read
1 4 as follows:
1 5 100.31 FIRE AND TORNADO DRILLS ~~IN PUBLIC~~ == WARNING
1 6 SYSTEMS == INSPECTION OF SCHOOLS.
1 7 1. It shall be the duty of the state fire marshal and the
1 8 fire marshal's designated subordinates to require all private
1 9 and public school officials and teachers to conduct not less
1 10 than four fire drills and not less than four tornado drills in
1 11 all school buildings during each school year when school is in
1 12 session; and to require the officials and teachers of all
1 13 schools to keep all doors and exits of their respective rooms
1 14 and buildings unlocked when occupied during school hours or
1 15 when such areas are being used by the public at other times.
1 16 Not less than two drills of each type shall be conducted
1 17 between July 1 and December 31 of each year and not less than
1 18 two drills of each type shall be conducted between January 1
1 19 and June 30 of each year.
1 20 2. Every school building with two or more classrooms shall
1 21 have a warning system for fires of a type approved by the
1 22 underwriters' laboratories and by the state fire marshal. The
1 23 warning system shall be used only for fire drills or as a
1 24 warning for emergency. Schools may modify the fire warning
1 25 system for use as a tornado warning system or shall install a
1 26 separate tornado warning system. Every school building shall
1 27 also be equipped with portable fire extinguishers, with the
1 28 type, size and number in accordance with national fire
1 29 protection association standards and approved by the state
1 30 fire marshal.
1 31 3. The state fire marshal or the fire marshal's deputies
1 32 shall cause each public or private school, college, or
1 33 university to be inspected at least once every ~~two~~ four years
1 34 to determine whether each school meets the fire safety
1 35 standards of this Code and is free from other fire hazards.
2 1 Provided, however, that cities which employ fire department
2 2 inspectors shall cause such inspections to be made.

2 3 DIVISION II
2 4 LEGAL AGE VIOLATIONS AT GAMING FACILITIES
2 5 Sec. 2. Section 99D.11, subsection 7, Code 2009, is
2 6 amended to read as follows:
2 7 7. A person under the age of twenty-one years shall not
2 8 make or attempt to make a pari-mutuel wager. A person who
2 9 violates this subsection commits a scheduled violation under
2 10 section 805.8C, subsection 5, paragraph "a".
2 11 Sec. 3. Section 99F.9, subsection 5, Code 2009, is amended
2 12 to read as follows:
2 13 5. A person under the age of twenty-one years shall not
2 14 make or attempt to make a wager on an excursion gambling boat,
2 15 gambling structure, or in a racetrack enclosure and shall not

2 16 be allowed on the gaming floor of an excursion gambling boat
2 17 or gambling structure or in the wagering area, as defined in
2 18 section 99D.2, or on the gaming floor of a racetrack
2 19 enclosure. However, a person eighteen years of age or older
2 20 may be employed to work on the gaming floor of an excursion
2 21 gambling boat or gambling structure or in the wagering area or
2 22 on the gaming floor of a racetrack enclosure. A person who
2 23 violates this subsection with respect to making or attempting
2 24 to make a wager commits a scheduled violation under section
2 25 805.8C, subsection 5, paragraph "a".

2 26 Sec. 4. Section 99F.9, Code 2009, is amended by adding the
2 27 following new subsection:

2 28 NEW SUBSECTION. 5A. a. A person under the age of
2 29 twenty-one years shall not enter or attempt to enter the
2 30 gaming floor or wagering area, as defined in section 99D.2, of
2 31 a facility licensed under this chapter to operate gambling
2 32 games.

2 33 b. A person under the age of twenty-one years does not
2 34 violate this subsection if any of the following circumstances
2 35 apply:

3 1 (1) The person is employed to work at the facility.
3 2 (2) The person is an employee or agent of the commission,
3 3 the division, a distributor, or a manufacturer, and acting
3 4 within the scope of the person's employment.

3 5 (3) The person is present in a racetrack enclosure and
3 6 does not enter or attempt to enter the gaming floor or
3 7 wagering area of the facility.

3 8 c. A person who violates this subsection commits a simple
3 9 misdemeanor punishable as a scheduled violation under section
3 10 805.8C, subsection 5, paragraph "b".

3 11 Sec. 5. Section 725.19, subsection 1, Code 2009, is
3 12 amended to read as follows:

3 13 1. Any person under the age of twenty-one years shall not
3 14 make or attempt to make a gambling wager, except as permitted
3 15 under chapter 99B. A person who violates this subsection
3 16 commits a scheduled violation under section 805.8C, subsection
3 17 5, paragraph "a".

3 18 Sec. 6. Section 805.8C, subsection 5, Code 2009, is
3 19 amended to read as follows:

3 20 5. GAMBLING VIOLATIONS.
3 21 a. For violations of legal age for gambling wagering under
3 22 section 99D.11, subsection 7, section 99F.9, subsection 5, and
3 23 section 725.19, subsection 1, the scheduled fine is five
3 24 hundred dollars. Failure to pay the fine by a person under
3 25 the age of eighteen shall not result in the person being
3 26 detained in a secure facility.

3 27 b. For legal age violations for entering or attempting to
3 28 enter a facility under section 99F.9, subsection 5A, the
3 29 scheduled fine is two hundred fifty dollars. Failure to pay
3 30 the fine by a person under the age of eighteen shall not
3 31 result in the person being detained in a secure facility.

3 32 DIVISION III

3 33 PUBLIC INTOXICATION TESTING

3 34 Sec. 7. Section 123.46, subsection 3, Code 2009, is
3 35 amended to read as follows:

4 1 3. When a peace officer arrests a person on a charge of
4 2 public intoxication under this section, the peace officer
4 3 shall inform the person that the person may have a chemical
4 4 test administered at the person's own expense. If a device
4 5 approved by the commissioner of public safety for testing a
4 6 sample of a person's breath to determine the person's blood
4 7 alcohol concentration is available, that is the only test that
4 8 need be offered the person arrested. In a prosecution for
4 9 public intoxication, evidence of the results of a chemical
4 10 test performed under this subsection is admissible upon proof
4 11 of a proper foundation. The percentage of alcohol present in
4 12 a person's blood, ~~or breath, or urine~~ established by the
4 13 results of a chemical test performed within two hours after
4 14 the person's arrest on a charge of public intoxication is
4 15 presumed to be the percentage of alcohol present at the time
4 16 of arrest.

4 17 DIVISION IV

4 18 OPERATING WHILE INTOXICATED TESTING

4 19 Sec. 8. Section 321J.1, subsection 1, paragraph c, Code
4 20 2009, is amended by striking the paragraph.

4 21 Sec. 9. Section 321J.2, subsection 3, paragraph a,
4 22 subparagraph (1), Code 2009, is amended to read as follows:

4 23 (1) If the defendant's alcohol concentration established
4 24 by the results of an analysis of a specimen of the defendant's
4 25 blood, ~~or breath, or urine~~ withdrawn in accordance with this
4 26 chapter exceeds .15, regardless of whether or not the alcohol

4 27 concentration indicated by the chemical test minus the
4 28 established margin of error inherent in the device or method
4 29 used to conduct the test equals an alcohol concentration of
4 30 .15 or more.

4 31 Sec. 10. Section 321J.2, subsection 8, paragraph a, Code
4 32 2009, is amended to read as follows:

4 33 a. The alcohol concentration established by the results of
4 34 an analysis of a specimen of the defendant's blood, ~~or breath,~~
~~4 35 or urine~~ withdrawn within two hours after the defendant was
5 1 driving or in physical control of a motor vehicle is presumed
5 2 to be the alcohol concentration at the time of driving or
5 3 being in physical control of the motor vehicle.

5 4 Sec. 11. Section 321J.2A, Code 2009, is amended to read as
5 5 follows:

5 6 321J.2A PERSONS UNDER THE AGE OF TWENTY=ONE.

5 7 1. A person who is under the age of twenty=one shall not
5 8 operate a motor vehicle while having an alcohol concentration,
5 9 as defined under section 321J.1, of .02 or more. The driver's
5 10 license or nonresident operating privilege of a person who is
5 11 under the age of twenty=one and who operates a motor vehicle
5 12 while having an alcohol concentration of .02 or more shall be
5 13 revoked by the department for the period of time specified
5 14 under section 321J.12. A revocation under this section shall
5 15 not preclude a prosecution or conviction under any applicable
5 16 criminal provisions of this chapter. However, if the person
5 17 is convicted of a criminal offense under section 321J.2, the
5 18 revocation imposed under this section shall be superseded by
5 19 any revocation imposed as a result of the conviction.

5 20 2. In any proceeding regarding a revocation under this
5 21 section, evidence of the results of analysis of a specimen of
5 22 the defendant's blood, breath, or urine is admissible upon
5 23 proof of a proper foundation. The alcohol concentration
5 24 established by the results of an analysis of a specimen of the
5 25 defendant's blood, ~~or breath,~~ ~~or urine~~ withdrawn within two
5 26 hours after the defendant was driving or in physical control
5 27 of a motor vehicle is presumed to be the alcohol concentration
5 28 at the time of driving or being in physical control of the
5 29 motor vehicle.

5 30 Sec. 12. Section 321J.6, subsection 1, unnumbered
5 31 paragraph 1, Code 2009, is amended to read as follows:

5 32 A person who operates a motor vehicle in this state under
5 33 circumstances which give reasonable grounds to believe that
5 34 the person has been operating a motor vehicle in violation of
5 35 section 321J.2 or 321J.2A is deemed to have given consent to
6 1 the withdrawal of specimens of the person's blood, breath, or
6 2 urine, as applicable, and to a chemical test or tests of the
6 3 specimens for the purpose of determining the alcohol
6 4 concentration or presence of a controlled substance or other
6 5 drugs, subject to this section. The withdrawal of the body
6 6 substances and the test or tests shall be administered at the
6 7 written request of a peace officer having reasonable grounds
6 8 to believe that the person was operating a motor vehicle in
6 9 violation of section 321J.2 or 321J.2A, and if any of the
6 10 following conditions exist:

6 11 Sec. 13. Section 321J.6, subsections 2 and 3, Code 2009,
6 12 are amended to read as follows:

6 13 2. The peace officer shall determine which of the three
6 14 substances, ~~breath, blood~~ breath, blood, or urine, shall be
6 15 tested. Refusal to submit to a chemical test of blood,
~~6 16 breath, or urine, or breath~~ is deemed a refusal to submit, and
6 17 section 321J.9 applies. ~~A refusal to submit to a chemical~~
~~6 18 test of blood is not deemed a refusal to submit, but in that~~
~~6 19 case, the peace officer shall then determine which one of the~~
~~6 20 other two substances shall be tested and shall offer the test.~~
6 21 If the peace officer fails to offer a test within two hours
6 22 after the preliminary screening test is administered or
6 23 refused or the arrest is made, whichever occurs first, a test
6 24 is not required, and there shall be no revocation under
6 25 section 321J.9.

6 26 3. Notwithstanding subsection 2, if the peace officer has
6 27 reasonable grounds to believe that the person was under the
6 28 influence of a controlled substance, or a drug other than
6 29 alcohol, or a blood or urine test shall be required even after
~~6 30 a breath test has been administered. If the peace officer has~~
~~6 31 reasonable grounds to believe that the person was under the~~
~~6 32 influence of a combination of alcohol and another drug, a~~
6 33 blood or urine test shall be required even after another type
6 34 of test has been administered. Section 321J.9 applies to a
6 35 refusal to submit to a chemical test of urine or blood
7 1 requested under this subsection.

7 2 Sec. 14. Section 321J.10, subsection 4, paragraph b,

7 3 subparagraph (2), Code 2009, is amended to read as follows:

7 4 (2) If the testimony in support of the warrant sets forth
7 5 facts and information that the peace officer has reasonable
7 6 grounds to believe that the person was under the influence of
7 7 a controlled substance, ~~or a drug other than alcohol, or a~~
7 8 ~~urine sample shall be collected in lieu of a blood sample if~~
7 9 ~~the person is capable of giving a urine sample and the urine~~
7 10 ~~sample can be collected without the need to physically compel~~
7 11 ~~the execution of the warrant. If the testimony in support of~~
7 12 ~~the warrant sets forth facts and information that the peace~~
7 13 ~~officer has reasonable grounds to believe that the person was~~
7 14 ~~under the influence of a combination of alcohol and another~~
7 15 ~~drug, a urine sample shall be collected in lieu of a blood~~
7 16 ~~sample, if the person is capable of giving a urine sample and~~
7 17 ~~the sample can be collected without the need to physically~~
7 18 ~~compel the execution of the warrant shall be collected.~~

7 19 Sec. 15. Section 321J.10A, subsection 2, unnumbered
7 20 paragraph 1, Code 2009, is amended to read as follows:

7 21 If the person from whom a specimen of blood is to be
7 22 withdrawn objects to the withdrawal, ~~a breath or urine sample~~
7 23 ~~may be taken under the following circumstances provisions~~
7 24 ~~shall apply:~~

7 25 Sec. 16. Section 321J.10A, subsection 2, paragraph b, Code
7 26 2009, is amended to read as follows:

7 27 b. If the peace officer has reasonable grounds to believe
7 28 that the person was under the influence of a controlled
7 29 substance, ~~or a drug other than alcohol, or a urine sample~~
7 30 ~~shall be collected in lieu of a blood sample if the person is~~
7 31 ~~capable of giving a urine sample and the sample can be~~
7 32 ~~collected. However, if the urine sample is unable to be~~
7 33 ~~collected, or if the peace officer has reasonable grounds to~~
7 34 ~~believe that the person was under the influence of a~~
7 35 ~~combination of alcohol and another drug, a urine blood sample~~
8 1 ~~shall be collected in lieu of a blood sample, if the person is~~
8 2 ~~capable of giving a urine sample and the sample can be~~
8 3 ~~collected without a warrant if all of the circumstances in~~
8 4 ~~subsection 1 apply.~~

8 5 Sec. 17. Section 321J.11, Code 2009, is amended to read as
8 6 follows:

8 7 321J.11 TAKING SAMPLE FOR TEST.

8 8 1. ~~Only a~~ A licensed physician, licensed physician
8 9 assistant as defined in section 148C.1, medical technologist,
8 10 or registered nurse, acting at the request of a peace officer,
8 11 may withdraw a specimen of blood for the purpose of
8 12 determining the alcohol concentration or the presence of a
8 13 controlled substance or other drugs. However, any peace
8 14 officer, using devices and methods approved by the
8 15 commissioner of public safety, may take a specimen of a
8 16 person's breath ~~or urine~~ for the purpose of determining the
8 17 alcohol concentration, or may take a specimen of a person's
8 18 urine for the purpose of determining the presence of a
8 19 controlled substance or other drugs. ~~Only new~~ New equipment
8 20 kept under strictly sanitary and sterile conditions shall be
8 21 used for drawing blood.

8 22 2. The person may have an independent chemical test or
8 23 tests administered at the person's own expense in addition to
8 24 any administered at the direction of a peace officer. The
8 25 failure or inability of the person to obtain an independent
8 26 chemical test or tests does not preclude the admission of
8 27 evidence of the results of the test or tests administered at
8 28 the direction of the peace officer. Upon the request of the
8 29 person who is tested, the results of the test or tests
8 30 administered at the direction of the peace officer shall be
8 31 made available to the person.

8 32 Sec. 18. Section 907.3, subsection 1, paragraph g,
8 33 subparagraph (1), Code 2009, is amended to read as follows:

8 34 (1) If the defendant's alcohol concentration established
8 35 by the results of an analysis of a specimen of the defendant's
9 1 blood, ~~or breath, or urine~~ withdrawn in accordance with
9 2 chapter 321J exceeds .15, regardless of whether or not the
9 3 alcohol concentration indicated by the chemical test minus the
9 4 established margin of error inherent in the device or method
9 5 used to conduct the test equals an alcohol concentration of
9 6 .15 or more.

9 7 Sec. 19. Section 907.3, subsection 2, paragraph c,
9 8 subparagraph (1), Code 2009, is amended to read as follows:

9 9 (1) If the defendant's alcohol concentration established
9 10 by the results of an analysis of a specimen of the defendant's
9 11 blood, ~~or breath, or urine~~ withdrawn in accordance with
9 12 chapter 321J exceeds .15, regardless of whether or not the
9 13 alcohol concentration indicated by the chemical test minus the

9 14 established margin of error inherent in the device or method
9 15 used to conduct the test equals an alcohol concentration of
9 16 .15 or more.
9 17 Sec. 20. Section 907.3, subsection 3, paragraph c,
9 18 subparagraph (1), Code 2009, is amended to read as follows:
9 19 (1) If the defendant's alcohol concentration established
9 20 by the results of an analysis of a specimen of the defendant's
9 21 blood, ~~or breath, or urine~~ withdrawn in accordance with
9 22 chapter 321J exceeds .15, regardless of whether or not the
9 23 alcohol concentration indicated by the chemical test minus the
9 24 established margin of error inherent in the device or method
9 25 used to conduct the test equals an alcohol concentration of
9 26 .15 or more.

9 27 DIVISION V

9 28 OPERATING MOTORBOAT OR SAILBOAT WHILE INTOXICATED

9 29 Sec. 21. Section 462A.2, subsection 1, paragraph c, Code
9 30 2009, is amended by striking the paragraph.

9 31 Sec. 22. Section 462A.2, subsection 6, Code 2009, is
9 32 amended to read as follows:

9 33 6. "Chemical test" means an analysis of a person's blood,
9 34 ~~or breath, urine,~~ or other bodily substance for the
9 35 determination of the presence of alcohol, ~~or an analysis of a~~
10 1 ~~person's blood, breath, urine, or other bodily substance for~~
10 2 ~~the determination of the presence of a controlled substance,~~
10 3 or a drug.

10 4 Sec. 23. Section 462A.14, subsection 3, paragraph a,
10 5 subparagraph (1), Code 2009, is amended to read as follows:
10 6 (1) If the defendant's alcohol concentration established
10 7 by the results of an analysis of a specimen of the defendant's
10 8 blood, ~~or breath, or urine~~ withdrawn in accordance with this
10 9 chapter exceeds .15, regardless of whether or not the alcohol
10 10 concentration indicated by the chemical test minus the
10 11 established margin of error inherent in the device or method
10 12 used to conduct the test equals an alcohol concentration of
10 13 .15 or more.

10 14 Sec. 24. Section 462A.14, subsection 8, paragraph a, Code
10 15 2009, is amended to read as follows:

10 16 a. The alcohol concentration established by the results of
10 17 an analysis of a specimen of the defendant's blood, ~~or breath,~~
10 18 ~~or urine~~ withdrawn within two hours after the defendant was
10 19 operating or in physical control of a motorboat or sailboat is
10 20 presumed to be the alcohol concentration at the time of
10 21 operating or being in physical control of the motorboat or
10 22 sailboat.

10 23 Sec. 25. Section 462A.14A, subsection 4, paragraphs c, d,
10 24 and e, Code 2009, are amended to read as follows:

10 25 c. Refusal to submit to a chemical test of ~~urine or blood,~~
10 26 ~~breath, or urine, as applicable~~ is deemed a refusal to submit,
10 27 and the peace officer shall inform the person that the
10 28 person's refusal will result in the suspension of the person's
10 29 privilege to operate a motorboat or sailboat.

10 30 ~~d. Refusal to submit to a chemical test of blood is not~~
10 31 ~~deemed a refusal to submit, but in that case, the peace~~
10 32 ~~officer shall then determine which one of the other two~~
10 33 ~~substances shall be tested and shall offer the test.~~

10 34 ~~e-~~ d. Notwithstanding paragraphs "a" through "~~d~~" "c", if
10 35 the peace officer has reasonable grounds to believe that the
11 1 person was under the influence of a drug other than alcohol,
11 2 or a combination of alcohol and another drug, a urine test may
11 3 be required even after a blood or breath test has been
11 4 administered.

11 5 Sec. 26. Section 462A.14D, subsection 4, paragraph b,
11 6 subparagraph (2), Code 2009, is amended to read as follows:

11 7 (2) If the testimony in support of the warrant sets forth
11 8 facts and information that the peace officer has reasonable
11 9 grounds to believe that the person was under the influence of
11 10 a controlled substance, ~~or a drug other than alcohol, or a~~
11 11 ~~urine sample shall be collected in lieu of a blood sample, if~~
11 12 ~~the person is capable of giving a urine sample and the urine~~
11 13 ~~sample can be collected without the need to physically compel~~
11 14 ~~the execution of the warrant. If the testimony in support of~~
11 15 ~~the warrant sets forth the facts and information that the~~
11 16 ~~peace officer has reasonable grounds to believe that the~~
11 17 ~~person was under the influence of a combination of alcohol and~~
11 18 ~~another drug, a urine sample shall be collected in lieu of a~~
11 19 ~~blood sample, if the person is capable of giving a urine~~
11 20 ~~sample and the sample can be collected without the need to~~
11 21 ~~physically compel the execution of the warrant shall be~~
11 22 ~~collected without a warrant if all of the circumstances in~~
11 23 ~~subsection 1 apply.~~

11 24 DIVISION VI

11 25 INTERCEPTION OF COMMUNICATIONS

11 26 Sec. 27. Section 808B.1, subsection 4, Code 2009, is
11 27 amended by adding the following new paragraph:

11 28 NEW PARAGRAPH. d. Electronic funds transfer information
11 29 stored by a financial institution in a communication system
11 30 used for the electronic storage and transfer of funds.

11 31 Sec. 28. Section 808B.1, subsection 8, Code 2009, is
11 32 amended to read as follows:

11 33 8. "Oral communication" means an oral communication
11 34 uttered by a person exhibiting an expectation that the
11 35 communication is not subject to interception, under
12 1 circumstances justifying that expectation. An "oral
12 2 communication" does not include an electronic communication.

12 3 Sec. 29. Section 808B.1, subsections 9, 11, and 12, Code
12 4 2009, are amended by striking the subsections and inserting in
12 5 lieu thereof the following:

12 6 9. "Pen register" means a device or process which records
12 7 or decodes dialing, routing, addressing, or signaling
12 8 information, but not the contents of the communication,
12 9 transmitted by an instrument or facility from which a wire or
12 10 electronic communication is transmitted. "Pen register" does
12 11 not include any device or process used by a provider or
12 12 customer of a wire or electronic communication service for
12 13 billing, or recording as an incident to billing, for
12 14 communications services provided by such provider or any
12 15 device or process used by a provider or customer of a wire
12 16 communication service for cost accounting or other like
12 17 purposes in the ordinary course of its business.

12 18 11. "Trap and trace device" means a device or process
12 19 which captures the incoming electronic or other impulses which
12 20 identify the originating number or other dialing, routing,
12 21 addressing, and signaling information reasonably likely to
12 22 identify the source of a wire or electronic communication, but
12 23 does not capture the contents of any communication.

12 24 12. "Wire communication" means any aural transfer made in
12 25 whole or in part through the use of facilities for the
12 26 transmission of communications by the aid of wire, cable, or
12 27 other like connection between the point of origin and the
12 28 point of reception, including the use of such connection in a
12 29 switching station, furnished or operated by any person engaged
12 30 in providing or operating such facilities for the transmission
12 31 of interstate or foreign communications or communications
12 32 affecting interstate or foreign commerce.

12 33 Sec. 30. Section 808B.3, Code 2009, is amended by adding
12 34 the following new subsections:

12 35 NEW SUBSECTION. 3. A felony offense involving ongoing
13 1 criminal conduct in violation of chapter 706A.

13 2 NEW SUBSECTION. 4. A forcible felony as defined in
13 3 section 702.11.

13 4 NEW SUBSECTION. 5. A felony fugitive warrant issued in
13 5 the state or involving an individual who is reasonably
13 6 believed to be located within the state.

13 7 Sec. 31. Section 808B.5, Code 2009, is amended by adding
13 8 the following new subsections:

13 9 NEW SUBSECTION. 11A. A judge shall issue a search warrant
13 10 which authorizes the placement, tracking, or monitoring of a
13 11 global positioning device, if the application includes facts,
13 12 information, and circumstances establishing sufficient grounds
13 13 for granting the application, and probable cause for believing
13 14 that the grounds exist.

13 15 NEW SUBSECTION. 11B. Upon the demand of an investigative
13 16 or law enforcement officer, a judge may issue a subpoena or
13 17 other court order in order to obtain information and
13 18 supporting documentation regarding contemporaneous or
13 19 prospective wire or electronic communications based upon a
13 20 finding that a prosecuting attorney is engaged in a criminal
13 21 investigation of an offense listed in section 808B.3.

13 22 NEW SUBSECTION. 11C. Notwithstanding any other provision
13 23 of law, upon the demand of an investigative or law enforcement
13 24 officer, a judge may authorize the capture of a wire or oral
13 25 communication by a pen register or trap and trace device, if a
13 26 judge finds that there is probable cause to believe that a
13 27 wire or oral communication relevant to a valid search warrant
13 28 will occur at any point while the warrant is in effect.

13 29 Sec. 32. Section 808B.10, unnumbered paragraph 1, Code
13 30 2009, is amended to read as follows:

13 31 A Except for emergency situations pursuant to section
13 32 808B.12, a person shall not install or use a pen register or a
13 33 trap and trace device without first obtaining a search warrant
13 34 or court order pursuant to either section 808B.11 or 808B.12.

13 35 However, a pen register or a trap and trace device may be used

14 1 or installed without court order if any of the following
14 2 apply:
14 3 Sec. 33. Section 808B.11, subsection 3, paragraph c, Code
14 4 2009, is amended to read as follows:
14 5 c. The telephone number if known, ~~and~~ the physical
14 6 location of the telephone line where the pen register or trap
14 7 and trace device will be attached, the method for determining
14 8 the location of the electronic communication, and the

14 9 geographic limits of the trap and trace device.
14 10 Sec. 34. Section 808B.12, Code 2009, is amended by
14 11 striking the section and inserting in lieu thereof the
14 12 following:

14 13 808B.12 EMERGENCY INSTALLATION AND USE == SUBSEQUENT
14 14 APPLICATION AND ORDER.

14 15 1. Notwithstanding any other provision of this chapter, a
14 16 special state agent authorized by the prosecuting attorney or
14 17 an assistant attorney general who reasonably determines that
14 18 an emergency situation described in subsection 2 exists which
14 19 requires the installation and use of a pen register or a trap
14 20 and trace device before an order authorizing such installation
14 21 and use can be obtained with due diligence, may install and
14 22 use a pen register or trap and trace device, if an order
14 23 approving the installation or use is applied for and issued in
14 24 accordance with section 808B.11 within forty-eight hours of
14 25 the installation.

14 26 2. Subsection 1 applies in the following emergency
14 27 situations:

14 28 a. Immediate danger of death or serious bodily injury to a
14 29 person.

14 30 b. Conspiratorial activities characteristic of organized
14 31 crime.

14 32 c. Immediate threat to a national security interest.

14 33 d. Ongoing attack on a computer that constitutes a crime
14 34 punishable by a term of imprisonment greater than one year.

14 35 3. In the absence of an authorizing order, such use shall
15 1 immediately terminate when the information sought is obtained,
15 2 when the application for the order is denied, or when
15 3 forty-eight hours have lapsed since the installation of the
15 4 pen register or trap and trace device, whichever is earlier.

15 5 4. The knowing installation or use by any investigative or
15 6 law enforcement officer of a pen register or trap and trace
15 7 device pursuant to subsection 1 without application for the
15 8 authorizing order within forty-eight hours of the installation
15 9 constitutes a serious misdemeanor.

15 10 5. A provider of a wire or electronic communication
15 11 service, landlord, custodian, or other person who furnishes
15 12 facilities or technical assistance pursuant to this section
15 13 shall be reasonably compensated for such reasonable expenses
15 14 incurred in providing such facilities and assistance.

15 15 Sec. 35. Section 808B.13, subsections 4 and 5, Code 2009,
15 16 are amended to read as follows:

15 17 4. A cause of action shall not lie in any court against
15 18 any provider of a wire or electronic communication service,
15 19 its officers, employees, agents, or other specified persons
15 20 for providing information, facilities, or assistance in
15 21 accordance with the terms of a search warrant or court order
15 22 under section 808B.11 or 808B.12.

15 23 5. A good faith reliance on a search warrant or court
15 24 order under section 808B.11 or 808B.12 is a complete defense
15 25 against any civil or criminal action brought under this
15 26 chapter or any other statute.

15 27 DIVISION VII

15 28 PEACE OFFICER SERVING AS FEDERAL ACTOR

15 29 Sec. 36. Section 80.9A, Code 2009, is amended by adding
15 30 the following new subsection:

15 31 NEW SUBSECTION. 8. a. A peace officer of the department,
15 32 when authorized by the commissioner, may act in concert with,
15 33 under the direction of, or otherwise serve as a state actor
15 34 for an officer or agent of the federal government.

15 35 b. If serving as a state actor for an officer or agent of
16 1 the federal government as provided in paragraph "a", the peace
16 2 officer shall be considered acting within the scope of the
16 3 employee's office or employment as defined in section 669.2,
16 4 subsection 1.

16 5 EXPLANATION

16 6 This bill relates to practices and procedures of the
16 7 department of public safety including school inspections,
16 8 gaming floor or wagering area restrictions, public
16 9 intoxication testing, operating while intoxicated testing,
16 10 interception of communications, and peace officers acting with
16 11 federal agents.

16 12 DIVISION I. The division provides that the state fire
16 13 marshal shall inspect a public or private school every four
16 14 years to determine whether the school meets fire safety
16 15 standards. Current law requires an inspection every two
16 16 years.

16 17 DIVISION II. The division prohibits a person under 21
16 18 years of age from entering or attempting to enter the gaming
16 19 floor or wagering area of a facility licensed under Code
16 20 chapter 99D to operate gambling games.

16 21 A person under 21 years of age does not violate the
16 22 prohibition if the person is employed at the gambling
16 23 facility, is an employee or agent acting within the person's
16 24 scope of employment by the state racing and gaming commission,
16 25 division of criminal investigation of the department of public
16 26 safety, a distributor, or a manufacturer, or the person is
16 27 present in a racetrack enclosure and does not enter or attempt
16 28 to enter the gaming floor or wagering area of the facility.

16 29 A person who violates the prohibition commits a simple
16 30 misdemeanor punishable by a scheduled fine of \$250.

16 31 DIVISION III. The division strikes a provision permitting
16 32 a urine test in a prosecution for public intoxication. The
16 33 division does not affect provisions relating to a blood or
16 34 breath test in such a prosecution.

16 35 DIVISION IV. The division strikes provisions allowing a
17 1 person arrested for operating a motor vehicle while
17 2 intoxicated to be tested for alcohol concentration levels from
17 3 a specimen of the arrested person's urine. Current law
17 4 permits testing of a specimen of an arrested person's blood,
17 5 breath, or urine. The division does not affect provisions
17 6 allowing testing of a specimen of an arrested person's urine
17 7 if the presence of a controlled substance is suspected.

17 8 The division also provides that a refusal to submit to a
17 9 test of the blood results in longer revocation of a driver's
17 10 license pursuant to Code section 321J.9. Currently, a refusal
17 11 of a test of the breath or urine, but not blood, results in a
17 12 longer revocation of the driver's license.

17 13 DIVISION V. The division strikes provisions permitting a
17 14 person arrested for operating a motorboat or sailboat while
17 15 intoxicated to be tested for alcohol concentration levels from
17 16 a specimen of the arrested person's urine. Current law
17 17 permits testing of a specimen of an arrested person's blood,
17 18 breath, or urine.

17 19 DIVISION VI. The division makes changes to Code chapter
17 20 808B (interception of communications).

17 21 The division excludes electronic funds transfer information
17 22 from the definition of "electronic communication".

17 23 The division specifies that an "oral communication" does
17 24 not include an "electronic communication".

17 25 The division modifies the definitions for "pen register",
17 26 "trap and trace device", and "wire communication".

17 27 The division expands the list of criminal investigations
17 28 for which the interception of communications may be authorized
17 29 to include ongoing criminal conduct (Code chapter 706A), a
17 30 forcible felony (Code section 702.11), or a felony fugitive
17 31 warrant for persons reasonably believed to be in this state.

17 32 Current law permits the interception of communications in
17 33 criminal investigations for a felony offense involving dealing
17 34 in a controlled substance or a felony offense involving money
17 35 laundering.

18 1 The division provides that a judge shall issue a search
18 2 warrant which authorizes the placement, tracking, or
18 3 monitoring of a global positioning device, if the application
18 4 contains sufficient grounds to establish probable cause.

18 5 The division provides that a judge may issue a subpoena or
18 6 other court order in order to obtain information and
18 7 supporting documentation regarding contemporaneous or
18 8 prospective wire or electronic communications based upon a
18 9 finding that a prosecuting attorney is engaged in a criminal
18 10 investigation of an offense listed in Code section 808B.3.

18 11 The division also provides that a judge may authorize the
18 12 capture of a wire or oral communication by a pen register or
18 13 trap and trace device, if a judge finds that there is probable
18 14 cause to believe that a wire or oral communication relevant to
18 15 a valid search warrant will occur at any point while the
18 16 warrant is in effect.

18 17 The division specifies that an order authorizing the
18 18 interception of a communication shall refer to the method for
18 19 determining the location of the electronic communication
18 20 intercepted in addition to other requirements specified in
18 21 Code section 808B.11(3).

18 22 The division permits a special agent or an assistant

18 23 attorney general who determines that an emergency situation
18 24 exists which requires the installation and use of a pen
18 25 register or a trap and trace device before an order
18 26 authorizing such installation and use can be obtained with due
18 27 diligence, to install and use a pen register or trap and trace
18 28 device if an order approving the installation or use is issued
18 29 within 48 hours of the installation occurring.

18 30 The division limits such emergency situations to those
18 31 involving death or serious bodily injury, conspiratorial
18 32 activities characteristic of organized crime, immediate
18 33 threats to national security, or ongoing attack on a computer
18 34 that constitutes a crime punishable by a term of imprisonment
18 35 greater than one year.

19 1 DIVISION VII. The division authorizes a peace officer of
19 2 the department of public safety to act in concert with, or
19 3 under the direction of, a federal officer or agent of the
19 4 federal government.

19 5 LSB 1333DP 83

19 6 jm/nh/14